

Letter of Findings Number: 04-20130088P
Tax Administration
For Tax Year 2009

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ISSUE

I. Tax Administration–Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business. The Indiana Department of Revenue ("Department") determined that Taxpayer had not timely remitted sales tax for the month of December, 2012. Taxpayer had used electronic filing, but had only filed the return without remitting payment. The Department issued proposed assessments for a ten percent negligence penalty and interest. Taxpayer protested the imposition of the penalty. An administrative hearing was held and this letter of findings results. Further facts will be supplied as required.

I. Tax Administration–Penalty.

DISCUSSION

The Department issued a proposed assessment for penalty on failure to remit sales tax for December, 2012. Taxpayer admits that this happened, but also states that it was merely an inadvertent mistake. Taxpayer states that it has always been diligent in performing its tax duties and also states that this incident was a one-time oversight. Taxpayer protests the imposition of penalty and requests a waiver of that penalty.

The Department refers to IC § 6-8.1-10-2.1, which states in relevant parts:

If a person:

...

(5) is required to make a payment by electronic funds transfer (as defined in [IC 4-8.1-2-7](#)), overnight courier, or personal delivery and the payment is not received by the department by the due date in funds acceptable to the department;
the person is subject to a penalty.

...

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

....

(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2](#)(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(Emphasis added).

Finally, [45 IAC 15-11-2](#)(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

(Emphasis added).

The Department considered Taxpayer's failure to remit sales tax by the filing deadline to constitute negligence and so imposed penalty under IC § 6-8.1-10-2.1(a). As a result of the protest process, Taxpayer has affirmatively established that it acted reasonably in its efforts to comply with Indiana's tax filing requirements, as required by [45 IAC 15-11-2](#)(c). The penalty will be waived. However, the Department takes this opportunity to notify Taxpayer that it is now aware of its sales tax obligations and that penalty may be imposed if this scenario

occurs again.

FINDING

Taxpayer's protest is sustained.

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